



California Fair Political Practices Commission

February 26, 1988

Douglas C. Holland
City Attorney
City of Burbank
275 E. Olive Ave.
P.O. Box 6459
Burbank, CA 91510

Re: Your Request for Advice
Our File No. A-88-036

Dear Mr. Holland:

This is in response to your letter requesting advice on behalf of Councilmember Mary Lou Howard regarding her responsibilities under the conflict-of-interest provisions of the Political Reform Act.^{1/}

QUESTION

May Councilmember Howard participate and vote on the proposed amendments to the city's residential parking ordinance or a pending growth management ordinance in light of her interest in a planned multi-family residential development within the city limits?

CONCLUSIONS

1. Councilmember Howard may participate in the decisions regarding the proposed parking ordinance.
2. Councilmember Howard may not participate in the decisions regarding the slow growth ordinance because of her interest in a planned multi-family development.

FACTS

Councilwoman Howard, together with her husband John Howard and her in-laws David and Mary Augustine, own eight contiguous residential lots in the City of Burbank. The lots are planned

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

and zoned for multi-family residential development. The lots are currently developed with primarily a single-family orientation and, therefore, are substantially underdeveloped.

The Howards and Augustines have not submitted a formal development application for the development of the property. Nevertheless, a tentative development proposal has been submitted to the Planning Division for initial comments in anticipation of the submission of a formal application for development.

The current development proposal contemplates 82 multi-family units, of which 68 are proposed to be two-bedroom units and 14 are proposed to be one-bedroom units.

Parking Ordinance Issue

The current Burbank Municipal Code establishes parking requirements of two parking spaces for every two-bedroom unit, 1.5 parking spaces for every one-bedroom unit, and one parking space for every single. Tandem parking is allowed under the code, if such parking spaces are in addition to the minimum requirement.

The city is currently considering proposed revisions to the city's parking requirements. A proposed ordinance would retain the two parking spaces per two-bedroom apartment. Singles, however, would be increased from 1.0 to 1.25 spaces per unit, and the requirements for one-bedroom units would be increased from 1.5 to 1.75 parking spaces per unit.

The Howard-Augustine multi-family project would, under existing code, require 157 parking spaces. Under the proposed code the project would require 161 parking stalls. Due to the total size and configuration of the lot, the project will provide 191 parking spaces, and an additional 20 tandem parking spaces. Thus, the project as currently proposed has parking spaces in excess of the current code as well as the proposed code.

Growth Limitation Ordinance Issue

The City of Burbank is also considering a growth limitation ordinance on multi-family residential development. The ordinance places a maximum limit of 400 dwelling units per year for each calendar year between 1988 and 1997. In addition, the ordinance specifically provides for a competitive procedure by which developers will annually compete for development allocations. The ordinance provides for specified criteria, and only those projects which will have the least impact on

local public facilities and services and which have the best quality of design would be approved.

All development proposals for multi-family projects, including the Howard-Augustine project, would be subject to the ordinance. The Planning Division has estimated that there are approximately 800 undeveloped and underdeveloped properties in the city which are currently zoned or planned for multi-family development, or both.

ANALYSIS

As a member of the Burbank City Council, Councilwoman Howard is a public official. (Section 82048.) As such, the Act requires that she not participate in any governmental decision in which she has a financial interest. (Section 87100.) An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of her immediate family, or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

Without knowing the specific value of the real property in which Councilmember Howard has an interest, it is safe to say that her share of the property described in your letter is worth more than \$1,000. Consequently, Councilmember Howard must refrain from participation in any governmental decisions which could foreseeably have a material financial effect on her property.

Foreseeability

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required; however, if the effect is a mere possibility it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

Parking Ordinance Issue

The plans Councilmember Howard has for her property include development of multi-family residential units with more than enough parking to meet the standards in current law, and in the proposed parking ordinance now before the city council. Based on these facts, since the Councilmember does not have to change

her plans in order to comply with current or proposed law, we see no foreseeable financial effect of the decision regarding the amended parking ordinance.

Consequently, Councilmember Howard is not prohibited from voting on the amended parking ordinance currently before the city council.

Growth Limitation Ordinance

The foreseeable effects of the growth limitation ordinance, on the other hand, are significant. The underdeveloped land may never be developed to its potential due to the proposed substantive and procedural requirements of the pending proposal. At a minimum, it is foreseeable that the project could be delayed, or that plans for the development be altered to meet the standards set forth in the new ordinance. In each instance the foreseeable effect involves financial consequences.

Material Effect

The next question is whether the financial effect on the councilmember's property will be material. The standards for determining whether a governmental decision will have a material financial effect on real property are set forth in Regulation 18702 (b)(2) (copy enclosed). A decision is material if it will increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month; or

2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or

2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

Regulation 18702(b)(2).

Applying this regulation to the facts before us we find that adoption of the proposed slow growth ordinance would most certainly have an impact on the income-producing potential of Councilmember Howard's property, as well as on its fair market value. (See Advice Letters to Skousen, No. A-87-062, and Romney, No. I-87-134, copies enclosed.)

Douglas C. Holland
February 26, 1988
Page 5

We are not in a position to determine the specific impact of the ordinance as to the councilmember's property. However, because the proposed ordinance places such strict limitations and standards on multi-family development, there is no question that its effect on her property will be material. (See Jung Advice Letter, No. A-87-154, copy enclosed.)

Public Generally

Even though the effect of a decision of the city council would be material, Councilmember Howard may still participate in the decision if it will affect her interests in substantially the same manner as it will affect all members of the public, or a significant segment of the public. (Regulation 18703, copy enclosed.)

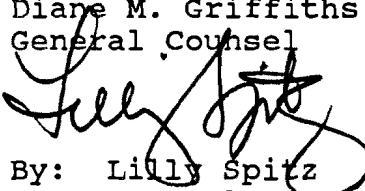
The Commission has determined that the "public" consists of the residents, landowners and businesses in the jurisdiction of the agency in question. (In re Owen (1976) 2 FPPC Ops. 77; In re Legan (1985) 9 FPPC Ops. 1, copies enclosed.) Thus, decisions that would affect everyone in the city, or a significant segment of the population of the city, would affect the public generally.

While the intent of the proposed ordinance is to benefit all of the people of the City of Burbank, the effect it will have on the value of the 800 undeveloped and underdeveloped properties identified by the planning staff will be far different from the effect on the public generally. (See Owen, supra.) Moreover, the relatively small number of properties which would be directly affected by the ordinance does not constitute a significant segment of the public. (See In re Ferraro (1978) 4 FPPC Ops. 62, copy enclosed.) Consequently, we conclude that Councilmember Howard may not participate in the decisions regarding the slow growth ordinance for the City of Burbank.

I hope that this response is helpful to you and the Councilmember. If I can be of further assistance, please don't hesitate to contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh
Enclosures



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January 8, 1988

Diane Griffith
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Re: Request for Formal Written Advice

Dear Ms. Griffith:

Mary Lou Howard, a member of the Burbank City Council, is requesting formal written advice pursuant to Government Code §83114(b) and §18329 of the Regulations of the Fair Political Practices Commission. I am the City Attorney for the City of Burbank and I have been authorized by Mrs. Howard to make this request relating to Mrs. Howard's duties under the Fair Political Practices Act.

The facts of the situation are as follows:

- o Councilwoman Howard, together with her husband John Howard and her in-laws David and Mary Augustine, own eight contiguous residential lots within the corporate limits of the City of Burbank. These lots are not within any redevelopment area or proposed project area. The lots are planned and zoned for multi-family development. The lots are currently developed with primarily a single-family orientation and, therefore, are substantially underdeveloped.
- o Councilwoman Howard, in addition to her duties as a member of the Burbank City Council, is also a member of the Burbank-Glendale-Pasadena Airport Authority and the California Coastal Commission and is not otherwise employed outside of the home. John Howard is an attorney, specializing in personal injury matters. The Howards are not developers and this is the first multi-family project they have proposed for any property they have owned. They do not own any other property in the City which is currently zoned and/or planned for multi-family development.

Diane Griffith
Re: Formal Written Advice
January 8, 1988
Page 2

- o The Howards and the Augustines have not submitted any formal development application for the development of the property. Nevertheless, a tentative development proposal has been submitted to the Planning Division for initial comments in anticipation of the submission of a formal application for development.
 - o The current development proposal contemplates 82 multi-family units, of which 68 are proposed to be two-bedroom units and 14 are proposed to be one-bedroom units.
 - o The current Burbank Municipal Code establishes parking requirements of 2 parking spaces for every two-bedroom unit, 1.5 parking spaces for every one-bedroom unit, and 1 parking space for every single. In addition, under the existing Burbank Municipal Code, tandem parking is not allowed if such parking spaces are necessary to meet minimum code requirements. Tandem parking is allowed, if such parking spaces are in addition to the minimum code.
 - o The City is currently considering proposed revisions to the City's parking requirements. A proposed ordinance would retain the two parking spaces per two-bedroom apartment. Singles, however, would be increased from 1.0 to 1.25 spaces per unit and the requirements for one-bedroom units would be increased from 1.5 to 1.75 parking spaces per unit.
 - o The Howard-Augustine multi-family project would, under existing code, require 157 parking spaces. Under the proposed code, the project would require 161 parking stalls. Due to the total size and configuration of the lot, the Howards and the Augustines, however, are in fact providing 191 parking spaces and an additional 20 tandem parking spaces. Thus, the project as currently proposed is substantially overparked in excess of the current code as well as the proposed code.
 - o The City of Burbank is also considering a growth limitation ordinance on multi-family residential development. The ordinance places a maximum limit of 400 dwelling units per year for each calendar year between 1988 and 1997. In addition, the ordinance specifically provides for a competitive procedure by which developers will annually
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Diane Griffith
Re: Formal Written Advice
January 8, 1988
Page 3

compete for development allocations. The ordinance provides for specified criteria and, pursuant to the procedure, only those projects which will have the least impact on local public facilities and services and which have the best quality of design would be approved. A copy of our proposed ordinance is attached for your information.

- o It is anticipated that the Howard-Augustine project would be subject to the procedures specified in the ordinance, if adopted. All development proposals for multi-family projects would be subject to the ordinance.
- o The Planning Division has estimated that there are approximately 800 undeveloped and under-developed properties in the City which are currently zoned and/or planned for multi-family development.

In light of the above facts, I would request that you answer the following questions:

- o May Councilmember Howard participate and vote on the proposed amendments to the City's parking ordinance?
- o May Mrs. Howard participate and vote on the proposed growth management ordinance?

If you have any questions, or if you require additional information regarding this request, please do not hesitate to call me. Your immediate attention to this matter will be greatly appreciated.

Very truly yours,



DOUGLAS C. HOLLAND
City Attorney

DCH:jm
DHPGRIFFITH

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE
CITY OF BURBANK ADDING ARTICLE 20
TO CHAPTER 31 OF THE BURBANK MUNICIPAL
CODE RELATING TO RESIDENTIAL GROWTH
MANAGEMENT.

City Attorney's Synopsis

This ordinance establishes a residential growth management program for the City of Burbank. The ordinance places a limit of 400 dwelling units per year for each calendar year between 1988 and 1997. This ordinance provides a procedure by which developers will annually compete for development allocations, which will be awarded to those projects which will have the least impact on local public facilities and services and which have the best quality of design, pursuant to specified criteria. Single family dwelling units, dwelling units which are being rehabilitated or remodeled, and condominium conversions would be exempt.

This ordinance also requires that any amendment to the Land Use Element of the General Plan in effect on July 1, 1988, which results in an increase in the number of residential dwelling units from the maximum provided for in such Land Use Element, must be confirmed by a majority vote of the electors.

This ordinance also requires the Community Development Director to prepare a Community Facilities Element to the General Plan by December 31, 1988 for the purpose of establishing City-wide public facility standards and performance criteria for completion of public facilities and the provision of public services.

THE COUNCIL OF THE CITY OF BURBANK ORDAINS:

Section 1. Article 20 is added to Chapter 31 of the Burbank Municipal Code to read:

ARTICLE 20. RESIDENTIAL GROWTH MANAGEMENT.

Sec. 31-2001. Purpose and Intent.

A. FINDINGS.

(1) The City of Burbank has an adopted General Plan and City ordinances relating to the regulation of residential development. The Council is currently reviewing and considering a revised Land Use Element and a Circulation Element for the City; in addition, the Council is reviewing and considering a specific plan for the Media District planning area of the City.

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12/11/87 ms

(2) The City of Burbank is experiencing a period of intense residential development which is affecting a gradual deterioration in the quality of life within the City. Factors contributing to this deterioration and the quality of life for residents of the City of Burbank are as follows:

- (i) Traffic congestion;
- (ii) Loss of open space land;
- (iii) Overburdening of necessary or desirable services and facilities of the City of Burbank, including, but not limited to, power, sewer, water, streets, public parking, parks, recreation services, libraries and library services, police services, fire services, and paramedic services;
- (iv) Higher utility rates to subsidize growth;
- (v) Increased air, groundwater, and noise pollution; and
- (vi) Crowding, congestion, and increased crime.

(3) The proposed buildout of the City's Circulation Element of the General Plan cannot accommodate the corresponding buildout of the either the existing or proposed Land Use Element as evidenced in part by the studies conducted in conjunction with the proposed specific plan for the Media District planning area.

B. INTENT.

(1) It is the intent of the Council of the City of Burbank to achieve a steady, rather than a fluctuating, overly rapid, rate of residential growth each year in order that the services provided by the City can be properly and effectively staged in a manner which will not overextend existing facilities, and in order that efficient services may be brought up to required and necessary standards while minimizing, by means of long range planning, the avoidable cost of short-sighted facility expansion. A more stable growth rate for the 1988 through 1997 period will permit the City and its residents to evaluate the effects of recent growth upon the quality of life while developing the necessary street improvements, fire stations, sewer capacity, water system, electric system, parks, and recreational and library facilities necessary to provide existing and future residents with at least the same level of service or, if practicable, improved levels of service.

(2) It is also the intent of the Council of the City of Burbank to establish control over the quality, distribution, and rate of growth of the City in order to:

- (i) Preserve the single family residential character of the community;
- (ii) Preserve the open space of the City;
- (iii) Provide a suitable living environment for all citizens and residents of the City;
- (iv) Ensure the adequacy of municipal, utility, recreation, park, and library facilities and services;
- (v) Facilitate a balance of housing types and values in the City that will accommodate the housing needs of all economic segments, including families of low and moderate income, and older families on limited and/fixed incomes;

- (vi) Ensure the balanced development of the City;
- (vii) Prevent future significant deterioration in the local air quality;
- (viii) Ensure that the traffic demands do not exceed the capacity of streets that are in character with the City's single family character;
- (ix) Ensure that the City does not grow in a pattern that places severe strain on local street and freeway systems;
- (x) Ensure the adequacy of fire protection and paramedic services;
- (xi) Ensure the adequacy of police protection; and
- (xii) Ensure adequate water, power, and sanitary sewer systems.

C. OBJECTIVES.

The protection of the public health, safety, and general welfare requires the establishment of a residential growth management program to accomplish the following:

- (1) Provide for a mechanism to phase growth over the period of the City's General Plan and proposed Land Use Element from the present through 1997.
- (2) Augment the policies of the City of Burbank as recorded in the General Plan and City ordinances relating to the regulation of residential development.
- (3) Provide for the annual construction of residential units in accordance with the population benchmarks of the General Plan.
- (4) Facilitate and implement the realization of General Plan goals which cannot be accomplished by zoning alone, including particularly the goals of the City's adopted Housing Element.
- (5) Ensure that no residential development will occur in the City of Burbank without adequate and timely provision for necessary public facilities and related services.
- (6) Ensure the adoption of a Community Facilities Element of the General Plan which would establish City-wide public facility standards for development and establish specific performance criteria for the completion of public facilities within the City of Burbank in a manner consistent with the Land Use, Circulation, and Housing Elements of the General Plan.

Sec. 31-2002. Mandatory Voter Approval for Residential Density Increases.

To secure the City's ultimate future population limit, within the ranges identified in the City's General Plan, the City shall not approve any amendment to the text or to any portion of the Land Use Element, as such Element may exist on July 1, 1988, which increases the number of residential units and resultant population limit reflected in that Element unless approved in an election by a majority vote of the electors of the City of Burbank.

Sec. 31-2003. Community Facilities Element of the General Plan.

The Community Development Director shall cause the preparation

and submission to the Planning Board and the City Council for review, consideration, and adoption, a Community Facilities Element of the General Plan by December 31, 1988. Such element shall establish City-wide public facility standards for development approval and establish specific performance criteria for the completion of public facilities and provision of public services in the City.

Sec. 31-2004. Establishment of Annual Residential Development Allotments.

No more than 400 dwelling units shall be constructed each year in the City of Burbank, commencing January 1, 1988. The annual allotment may be modified by the Council to an amount not greater than 15% more or less for any given year, provided that the annual allotment for the next succeeding year shall be higher or lower as the case may be, in order to redress any excess or deficiency.

Sec. 31-2005. Development Allotment Application.

No building permit for any dwelling unit may be issued unless a development allotment for such dwelling unit has been granted. In order to be considered for a development allocation, a project involving the construction of residential dwelling units must have received all discretionary entitlement approvals, unless otherwise exempt from the provisions of this article.

Sec. 31-2006. Development Allotment Application.

A. FILING.

An application for a development allotment shall be made on the form prescribed by the Community Development Director. All applications shall be signed by the owner of the property or a person with appropriate power of attorney.

B. FILING FEE.

Each application shall be accompanied by the fee specified in the Burbank Fee Resolution.

C. FILING PERIOD.

All applications shall be filed during the filing period so designated by the Community Development Director. Such filing period shall be at least thirty (30) days in duration.

Sec. 31-2007. Development Allocation Evaluation.

The Planning Board shall consider annually all applications properly submitted and shall make recommendations to the Council based on the criteria and according to the procedures set forth below.

A. PUBLIC HEARING.

The Planning Board shall hold a public hearing to evaluate development allocation applications. At least ten (10) days prior to the hearing, notice of the hearing shall be given by publication in a newspaper of general circulation within the City and by written notice to each applicant.

B. AVAILABILITY OF PUBLIC FACILITIES AND SERVICES.

The Planning Board shall examine each application for its relations to, or impact upon, local public facilities and services, and shall rate each development by the assignment of from 0 to 10 points (0 indicating "very poor", 10 indicating "excellent") on each of the following attributes:

(1) The capacity of the water system to provide for the needs of the proposed development without system extensions beyond those normally installed by the developer.

(2) The capacity of the sanitary sewers to dispose of the waste of the proposed development without system extensions beyond those normally installed by the developer.

(3) The capacity of the drainage facilities to adequately dispose of the surface runoff of the proposed development without system extensions beyond those normally installed by the developer.

(4) The ability of the Fire Department and the Police Department to provide fire protection, paramedic protection, and police services according to the established response standards of the City without the necessity of establishing new facilities or requiring addition of major equipment, housing facilities, or additional personnel.

(5) The capacity of major streets to provide for the need of the proposed development without substantially altering existing traffic patterns or overloading the existing street system.

(6) The availability of parks, playgrounds, and libraries to meet the additional demands for vital public services without extension of services beyond those provided by the developer.

C. QUALITY OF DESIGN AND CONTRIBUTION OF PUBLIC WELFARE AND AMENITY.

The Board shall examine each application and shall rate each development by the assignment of from 0 to 10 points (0 indicating "very poor", 10 indicating "excellent") on each of the following attributes:

(1) Site and architectural design quality which may be indicated by the harmony of the proposed buildings in terms of size, height, color, and location with existing neighborhood development.

(2) The amount and character of open space landscaping.

(3) Site and architectural design quality which may be indicated by the arrangement of the site for efficiency of circulation, on and offsite traffic safety, and privacy.

(4) The provision of public and/or private usable open space.

(5) Contributions to and extensions of existing systems of foot or bicycle paths, equestrian trails, and facilities and/or greenbelts.

(6) The provision of needed public facilities such as critical linkages in the major street system, schoolrooms, functional parks, or other vital public facilities.

(7) Site and architectural design quality which may be indicated by the amount in character of modification of the topography of the site.

(8) Absence of deleterious impact on trees and archeological sites.

(9) The provision of significant water conservation features.

(10) The provision of energy generation and conservation features, such as additional insulation, house siting and design, solar techniques and other innovative techniques.

(11) Absence of deleterious impact on the physical and/or aesthetic environment.

(12) Design and features which contribute significantly to the economic feasibility of producing housing at the lowest possible cost given economic and environmental factors, the public health, and safety, and the need to facilitate the development of housing for persons of low or moderate income.

D. RECOMMENDATION TO COUNCIL.

Upon completion of the evaluation of each development and clarification of all point assignments to the applicants, the Board shall present its list of evaluations, along with the decisions and recommendations of the Board, to the City Council for the awarding of development allotments.

Sec. No. 31-2008. Development Allotment Awards.

A. COUNCIL HEARING.

The Council shall hold a public hearing upon receipt of the recommendations of The Board. Notice of the hearing shall be given at least ten (10) days prior to the hearing by publication in a newspaper of general circulation within the City and the written notice to each applicant. During the course of the public hearing the Council shall receive public testimony and shall consider the recommended point rating and ranking of each application forwarded from the Board and may re-evaluate any application for reassignment of point ratings and rankings.

B. LIMITATIONS.

The number of dwelling units for which development allotments shall be issued shall not exceed the allotments as established in Section 31-2004. No single developer shall, in any one year, be issued a development allotment for dwelling units in excess of 40% of the total number of development allotments available for such year. The Council shall eliminate from consideration any development which has not been assigned a minimum 35 points under Section 31-2007(B) or a minimum of 80 points under Section

31-2007(C). The Council shall make the annual development allotments at a time to be selected by the Council.

C. RECORDATION.

The award of a development allotment for a project shall be recorded with the Los Angeles County Recorder by the applicant prior to the issuance of a residential dwelling unit building permit. Development allotments shall not be transferred to another project or property.

Sec. No. 31-2008. Failure to Construct.

Should a developer fail to initiate construction within twelve (12) months after award of the development allotment, the Council, after hearing, may, by majority vote, rescind all or part of the development allotment.

Sec. No. 31-2009. Exemptions.

The provisions of this article shall not apply to the following residential projects:

- (1) Construction of a single family dwelling unit on a legally existing and appropriately zoned lot.
- (2) Rehabilitation or remodeling of an existing dwelling, or conversion of apartments to condominiums, so long as no additional dwelling units are created.
- (3) Any project for which site plan review has been completed and an application for a building permit has been filed with the City prior to January 1, 1988.

Sec. No. 31-2010. Judicial Review.

Any legal action to challenge any decision or denial of the Planning Board or the City Council performing a function under this article must be filed in a court of competent jurisdiction within thirty (30) days immediately following the action challenged.

Sec. No. 31-2011. Amendments.

The Council, after a public hearing, may only amend this article, or any provision thereof, by a unanimous vote of the Council.

Sec. No. 31-2012. Severability.

If any provision of this article, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

Sec. No. 31-2013. Effective Date.

Unless otherwise amended or extended by a unanimous vote of the Council, this article shall become inoperative at 12:01 a.m. on January 1, 1998.

The City Clerk shall certify to the passage of this Ordinance and cause the title, number, date, and synopsis of this Ordinance to be published once in the Burbank Leader.

PASSED and ADOPTED this ____ day of _____, 1988.

Michael R. Hastings
Mayor of the City of Burbank

Attest:

Merle L. Maurer, City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Merle L. Maurer, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. _____ was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the _____ day of _____, 1988, by the following vote:

AYES:

NOES:

ABSENT:

I further certify that said Ordinance was published as required by law in the Burbank Leader as a newspaper of general circulation in the City of Burbank, California, on the _____ day of _____, 1987.

Merle L. Maurer, City Clerk



California Fair Political Practices Commission

January 15, 1988

Douglas C. Holland
City Attorney
P.O. Box 6459
Burbank, CA 91510

Re: 88-036

Dear Mr. Holland:

Your letter requesting advice under the Political Reform Act was received on January 14, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh

cc: Mary Lou Howard, Councilmember



OFFICE OF THE CITY ATTORNEY

1001 E. GLENDALE • P.O. BOX 1000 • BURBANK, CALIFORNIA 91501

ROBERT L. GILBERT, JR.
CITY ATTORNEY

RICHARD W. MAHONEY
DEPUTY CITY ATTORNEY
ENURAY L. ANDERSON
CITY CLERK

TERRY B. STEVENSON
THEODORE J. REYNOLDS
ASSISTANT CITY ATTORNEYS

MARY E. KELLY
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January 8, 1988

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P.O. Box 807
Sacramento, California 95804

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The facts of the situation are as follows:

- o Councilwoman Howard, together with her husband John Howard and her in-laws David and Mary Augustine, own eight contiguous residential lots within the corporate limits of the City of Burbank. These lots are not within any redevelopment area or proposed project area. The lots are planned and zoned for multi-family development. The lots are currently developed with primarily a single-family orientation and, therefore, are substantially underdeveloped.
- o Councilwoman Howard, in addition to her duties as a member of the Burbank City Council, is also a member of the Burbank-Glendale-Pasadena Airport Authority and the California Coastal Commission and is not otherwise employed outside of the home. John Howard is an attorney, specializing in personal injury matters. The Howards are not developers and this is the first multi-family project they have proposed for any property they have owned. They do not own any other property in the City which is currently zoned and/or planned for multi-family development.

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Re: Formal Written Advice
January 8, 1988
Page 2

- o The Howards and the Augustines have not submitted any formal development application for the development of the property. Nevertheless, a tentative development proposal has been submitted to the Planning Division for initial comments in anticipation of the submission of a formal application for development.
- o The current development proposal contemplates 82 multi-family units, of which 68 are proposed to be two-bedroom units and 14 are proposed to be one-bedroom units.
- o The current Burbank Municipal Code establishes parking requirements of 2 parking spaces for every two-bedroom unit, 1.5 parking spaces for every one-bedroom unit, and 1 parking space for every single. In addition, under the existing Burbank Municipal Code, tandem parking is not allowed if such parking spaces are necessary to meet minimum code requirements. Tandem parking is allowed, if such parking spaces are in addition to the minimum code.
- o The City is currently considering proposed revisions to the City's parking requirements. A proposed ordinance would retain the two parking spaces per two-bedroom apartment. Singles, however, would be increased from 1.0 to 1.25 spaces per unit and the requirements for one-bedroom units would be increased from 1.5 to 1.75 parking spaces per unit.
- o The Howard-Augustine multi-family project would, under existing code, require 157 parking spaces. Under the proposed code, the project would require 161 parking stalls. Due to the total size and configuration of the lot, the Howards and the Augustines, however, are in fact providing 191 parking spaces and an additional 20 tandem parking spaces. Thus, the project as currently proposed is substantially overparked in excess of the current code as well as the proposed code.
- o The City of Burbank is also considering a growth limitation ordinance on multi-family residential development. The ordinance places a maximum limit of 400 dwelling units per year for each calendar year between 1988 and 1997. In addition, the ordinance specifically provides for a competitive procedure by which developers will annually

Diane Griffith
Re: Formal Written Advice
January 8, 1988
Page 3

compete for development allocations. The ordinance provides for specified criteria and, pursuant to the procedure, only those projects which will have the least impact on local public facilities and services and which have the best quality of design would be approved. A copy of our proposed ordinance is attached for your information.

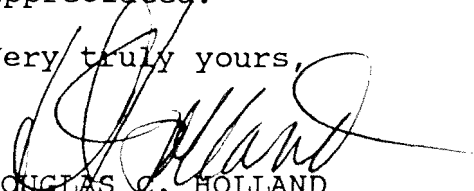
- o It is anticipated that the Howard-Augustine project would be subject to the procedures specified in the ordinance, if adopted. All development proposals for multi-family projects would be subject to the ordinance.
- o The Planning Division has estimated that there are approximately 800 undeveloped and under-developed properties in the City which are currently zoned and/or planned for multi-family development.

In light of the above facts, I would request that you answer the following questions:

- o May Councilmember Howard participate and vote on the proposed amendments to the City's parking ordinance?
- o May Mrs. Howard participate and vote on the proposed growth management ordinance?

If you have any questions, or if you require additional information regarding this request, please do not hesitate to call me. Your immediate attention to this matter will be greatly appreciated.

Very truly yours,



DOUGLAS C. HOLLAND
City Attorney

DCH:jm
DHPGRIFFITH

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE
CITY OF BURBANK ADDING ARTICLE 20
TO CHAPTER 31 OF THE BURBANK MUNICIPAL
CODE RELATING TO RESIDENTIAL GROWTH
MANAGEMENT.

City Attorney's Synopsis

This ordinance establishes a residential growth management program for the City of Burbank. The ordinance places a limit of 400 dwelling units per year for each calendar year between 1988 and 1997. This ordinance provides a procedure by which developers will annually compete for development allocations, which will be awarded to those projects which will have the least impact on local public facilities and services and which have the best quality of design, pursuant to specified criteria. Single family dwelling units, dwelling units which are being rehabilitated or remodeled, and condominium conversions would be exempt.

This ordinance also requires that any amendment to the Land Use Element of the General Plan in effect on July 1, 1988, which results in an increase in the number of residential dwelling units from the maximum provided for in such Land Use Element, must be confirmed by a majority vote of the electors.

This ordinance also requires the Community Development Director to prepare a Community Facilities Element to the General Plan by December 31, 1988 for the purpose of establishing City-wide public facility standards and performance criteria for completion of public facilities and the provision of public services.

THE COUNCIL OF THE CITY OF BURBANK ORDAINS:

Section 1. Article 20 is added to Chapter 31 of the Burbank Municipal Code to read:

ARTICLE 20. RESIDENTIAL GROWTH MANAGEMENT.

Sec. 31-2001. Purpose and Intent.

A. FINDINGS.

(1) The City of Burbank has an adopted General Plan and City ordinances relating to the regulation of residential development. The Council is currently reviewing and considering a revised Land Use Element and a Circulation Element for the City; in addition, the Council is reviewing and considering a specific plan for the Media District planning area of the City.

DHORESGROW
12/11/87 ms

(2) The City of Burbank is experiencing a period of intense residential development which is affecting a gradual deterioration in the quality of life within the City. Factors contributing to this deterioration and the quality of life for residents of the City of Burbank are as follows:

- (i) Traffic congestion;
- (ii) Loss of open space land;
- (iii) Overburdening of necessary or desirable services and facilities of the City of Burbank, including, but not limited to, power, sewer, water, streets, public parking, parks, recreation services, libraries and library services, police services, fire services, and paramedic services;
- (iv) Higher utility rates to subsidize growth;
- (v) Increased air, groundwater, and noise pollution; and
- (vi) Crowding, congestion, and increased crime.

(3) The proposed buildout of the City's Circulation Element of the General Plan cannot accommodate the corresponding buildout of the either the existing or proposed Land Use Element as evidenced in part by the studies conducted in conjunction with the proposed specific plan for the Media District planning area.

B. INTENT.

(1) It is the intent of the Council of the City of Burbank to achieve a steady, rather than a fluctuating, overly rapid, rate of residential growth each year in order that the services provided by the City can be properly and effectively staged in a manner which will not overextend existing facilities, and in order that efficient services may be brought up to required and necessary standards while minimizing, by means of long range planning, the avoidable cost of short-sighted facility expansion. A more stable growth rate for the 1988 through 1997 period will permit the City and its residents to evaluate the effects of recent growth upon the quality of life while developing the necessary street improvements, fire stations, sewer capacity, water system, electric system, parks, and recreational and library facilities necessary to provide existing and future residents with at least the same level of service or, if practicable, improved levels of service.

(2) It is also the intent of the Council of the City of Burbank to establish control over the quality, distribution, and rate of growth of the City in order to:

- (i) Preserve the single family residential character of the community;
- (ii) Preserve the open space of the City;
- (iii) Provide a suitable living environment for all citizens and residents of the City;
- (iv) Ensure the adequacy of municipal, utility, recreation, park, and library facilities and services;
- (v) Facilitate a balance of housing types and values in the City that will accommodate the housing needs of all economic segments, including families of low and moderate income, and older families on limited and/fixed incomes;

- (vi) Ensure the balanced development of the City;
- (vii) Prevent future significant deterioration in the local air quality;
- (viii) Ensure that the traffic demands do not exceed the capacity of streets that are in character with the City's single family character;
- (ix) Ensure that the City does not grow in a pattern that places severe strain on local street and freeway systems;
- (x) Ensure the adequacy of fire protection and paramedic services;
- (xi) Ensure the adequacy of police protection; and
- (xii) Ensure adequate water, power, and sanitary sewer systems.

C. OBJECTIVES.

The protection of the public health, safety, and general welfare requires the establishment of a residential growth management program to accomplish the following:

- (1) Provide for a mechanism to phase growth over the period of the City's General Plan and proposed Land Use Element from the present through 1997.
- (2) Augment the policies of the City of Burbank as recorded in the General Plan and City ordinances relating to the regulation of residential development.
- (3) Provide for the annual construction of residential units in accordance with the population benchmarks of the General Plan.
- (4) Facilitate and implement the realization of General Plan goals which cannot be accomplished by zoning alone, including particularly the goals of the City's adopted Housing Element.
- (5) Ensure that no residential development will occur in the City of Burbank without adequate and timely provision for necessary public facilities and related services.
- (6) Ensure the adoption of a Community Facilities Element of the General Plan which would establish City-wide public facility standards for development and establish specific performance criteria for the completion of public facilities within the City of Burbank in a manner consistent with the Land Use, Circulation, and Housing Elements of the General Plan.

Sec. 31-2002. Mandatory Voter Approval for Residential Density Increases.

To secure the City's ultimate future population limit, within the ranges identified in the City's General Plan, the City shall not approve any amendment to the text or to any portion of the Land Use Element, as such Element may exist on July 1, 1988, which increases the number of residential units and resultant population limit reflected in that Element unless approved in an election by a majority vote of the electors of the City of Burbank.

Sec. 31-2003. Community Facilities Element of the General Plan.

The Community Development Director shall cause the preparation

and submission to the Planning Board and the City Council for review, consideration, and adoption, a Community Facilities Element of the General Plan by December 31, 1988. Such element shall establish City-wide public facility standards for development approval and establish specific performance criteria for the completion of public facilities and provision of public services in the City.

Sec. 31-2004. Establishment of Annual Residential Development Allotments.

No more than 400 dwelling units shall be constructed each year in the City of Burbank, commencing January 1, 1988. The annual allotment may be modified by the Council to an amount not greater than 15% more or less for any given year, provided that the annual allotment for the next succeeding year shall be higher or lower as the case may be, in order to redress any excess or deficiency.

Sec. 31-2005. Development Allotment Application.

No building permit for any dwelling unit may be issued unless a development allotment for such dwelling unit has been granted. In order to be considered for a development allocation, a project involving the construction of residential dwelling units must have received all discretionary entitlement approvals, unless otherwise exempt from the provisions of this article.

Sec. 31-2006. Development Allotment Application.

A. FILING.

An application for a development allotment shall be made on the form prescribed by the Community Development Director. All applications shall be signed by the owner of the property or a person with appropriate power of attorney.

B. FILING FEE.

Each application shall be accompanied by the fee specified in the Burbank Fee Resolution.

C. FILING PERIOD.

All applications shall be filed during the filing period so designated by the Community Development Director. Such filing period shall be at least thirty (30) days in duration.

Sec. 31-2007. Development Allocation Evaluation.

The Planning Board shall consider annually all applications properly submitted and shall make recommendations to the Council based on the criteria and according to the procedures set forth below.

A. PUBLIC HEARING.

The Planning Board shall hold a public hearing to evaluate development allocation applications. At least ten (10) days prior to the hearing, notice of the hearing shall be given by publication in a newspaper of general circulation within the City and by written notice to each applicant.

B. AVAILABILITY OF PUBLIC FACILITIES AND SERVICES.

The Planning Board shall examine each application for its relations to, or impact upon, local public facilities and services, and shall rate each development by the assignment of from 0 to 10 points (0 indicating "very poor", 10 indicating "excellent") on each of the following attributes:

(1) The capacity of the water system to provide for the needs of the proposed development without system extensions beyond those normally installed by the developer.

(2) The capacity of the sanitary sewers to dispose of the waste of the proposed development without system extensions beyond those normally installed by the developer.

(3) The capacity of the drainage facilities to adequately dispose of the surface runoff of the proposed development without system extensions beyond those normally installed by the developer.

(4) The ability of the Fire Department and the Police Department to provide fire protection, paramedic protection, and police services according to the established response standards of the City without the necessity of establishing new facilities or requiring addition of major equipment, housing facilities, or additional personnel.

(5) The capacity of major streets to provide for the need of the proposed development without substantially altering existing traffic patterns or overloading the existing street system.

(6) The availability of parks, playgrounds, and libraries to meet the additional demands for vital public services without extension of services beyond those provided by the developer.

C. QUALITY OF DESIGN AND CONTRIBUTION OF PUBLIC WELFARE AND AMENITY.

The Board shall examine each application and shall rate each development by the assignment of from 0 to 10 points (0 indicating "very poor", 10 indicating "excellent") on each of the following attributes:

(1) Site and architectural design quality which may be indicated by the harmony of the proposed buildings in terms of size, height, color, and location with existing neighborhood development.

(2) The amount and character of open space landscaping.

(3) Site and architectural design quality which may be indicated by the arrangement of the site for efficiency of circulation, on and offsite traffic safety, and privacy.

(4) The provision of public and/or private usable open space.

(5) Contributions to and extensions of existing systems of foot or bicycle paths, equestrian trails, and facilities and/or greenbelts.

(6) The provision of needed public facilities such as critical linkages in the major street system, schoolrooms, functional parks, or other vital public facilities.

(7) Site and architectural design quality which may be indicated by the amount in character of modification of the topography of the site.

(8) Absence of deleterious impact on trees and archeological sites.

(9) The provision of significant water conservation features.

(10) The provision of energy generation and conservation features, such as additional insulation, house siting and design, solar techniques and other innovative techniques.

(11) Absence of deleterious impact on the physical and/or aesthetic environment.

(12) Design and features which contribute significantly to the economic feasibility of producing housing at the lowest possible cost given economic and environmental factors, the public health, and safety, and the need to facilitate the development of housing for persons of low or moderate income.

D. RECOMMENDATION TO COUNCIL.

Upon completion of the evaluation of each development and clarification of all point assignments to the applicants, the Board shall present its list of evaluations, along with the decisions and recommendations of the Board, to the City Council for the awarding of development allotments.

Sec. No. 31-2008. Development Allotment Awards.

A. COUNCIL HEARING.

The Council shall hold a public hearing upon receipt of the recommendations of The Board. Notice of the hearing shall be given at least ten (10) days prior to the hearing by publication in a newspaper of general circulation within the City and the written notice to each applicant. During the course of the public hearing the Council shall receive public testimony and shall consider the recommended point rating and ranking of each application forwarded from the Board and may re-evaluate any application for reassignment of point ratings and rankings.

B. LIMITATIONS.

The number of dwelling units for which development allotments shall be issued shall not exceed the allotments as established in Section 31-2004. No single developer shall, in any one year, be issued a development allotment for dwelling units in excess of 40% of the total number of development allotments available for such year. The Council shall eliminate from consideration any development which has not been assigned a minimum 35 points under Section 31-2007(B) or a minimum of 80 points under Section

Sec. No. 31-2013. Effective Date.

Unless otherwise amended or extended by a unanimous vote of the Council, this article shall become inoperative at 12:01 a.m. on January 1, 1998.

The City Clerk shall certify to the passage of this Ordinance and cause the title, number, date, and synopsis of this Ordinance to be published once in the Burbank Leader.

PASSED and ADOPTED this ____ day of _____, 1988.

Michael R. Hastings
Mayor of the City of Burbank

Attest:

Merle L. Maurer, City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Merle L. Maurer, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. _____ was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the _____ day of _____, 1988, by the following vote:

AYES:

NOES:

ABSENT:

I further certify that said Ordinance was published as required by law in the Burbank Leader as a newspaper of general circulation in the City of Burbank, California, on the _____ day of _____, 1987.

Merle L. Maurer, City Clerk